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C O N F I D E N T I A L SECTION 01 OF 03 HARARE 000313

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SUBJECT: TSVANGIRAI TRIAL: BEN-MENASHE CROSS-EXAMINATION

REF: HARARE 259

Classified By: political section chief Matt Harrington. Reasons: 1.5 (B) and (D).

Summary

1. (C) The treason trial of Movement for Democratic Change (MDC) officials Morgan Tsvangirai, Welshman Ncube, and Renson Gasela entered its eighth day on February 12. Since February 6, defense counsel has subjected the state's star witness, Ari Ben-Menashe, to an intensive cross-examination, a process which has not yet concluded. Lead defense attorney George Bizos has questioned Ben-Menashe about a number of contracts with foreign governments which he apparently did not fulfill but for which he nonetheless received payments. Presiding judge Paddington Garwe has ruled that Ben-Menashe must answer questions -- in camera -- regarding the contract he signed with the Government of Zimbabwe, specifically what payments he received for what activities. Ben-Menashe has engaged in outrageous behavior in court, dismissing questions he did not want to answer and using inappropriate language, but the histrionics have played into Bizos's successful attempts to portray the witness as an unscrupulous conman.

Ben-Menashe's contract with Government of Zimbabwe

2. (U) As reported reftel, Ben-Menashe had acknowledged signing a contract with the Government of Zimbabwe for provision of public relations services on January 10, 2002, shortly after the infamous videotape of MDC leader Morgan Tsvangirai was made public, and that he had received

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U.S.\$400,000 for services rendered. On February 7, defense counsel George Bizos asked Ben-Menashe to clarify what services he had provided. Ben-Menashe declined to answer, citing confidentiality, sparking two days of arguments by both sides as to whether he could be compelled to answer that question. On February 10, the prosecutor produced a letter from Minister of State for National Security Nicholas Goche stating that forcing Ben-Menashe to discuss the contract details would compromise Zimbabwe's national security. Bizos countered with an argument that excluding such testimony would violate his clients' constitutional right to a fair trial. On the morning of February 12, Judge Garwe finally ruled that Ben-Menashe would have to testify regarding this contract but that, given the potential damage to national security, cross-examination would take place in camera. The courtroom was immediately cleared of outside observers and, as of midday on February 12, the trial was proceeding in camera.

Unfulfilled contracts with governments

3. (U) Bizos has successfully used much of his cross-examination to impugn Ben-Menashe's credibility. One particular focus has been contracts signed between CSC, a company led by Ben-Menashe, and a number of foreign governments for provision of grains. Ben-Menashe admitted, for instance, signing a contract with Zambia to provide corn. He insisted, however, that no corn was ever delivered because the contract was terminated by the Government of Zambia, and that the U.S.\$7 million he received from the Government of Zambia was for provision of other services -- which he refused to specify. Asked to comment on a significant judgment issued against him in the London court of arbitration for failing to fulfill that contract, Ben-Menashe merely repeated several times that "that was because we had no legal counsel present." Asked whether he had signed a contract to provide wheat to Belorussia, Ben-Menashe said "no," but did acknowledge, after being pressed, that that topic had been discussed. Bizos asked whether CSC had been paid U.S.\$300,000 from the government of Belorussia, Ben-Menashe answered in the affirmative but insisted the payment was for other services provided. What services had he provided for that payment, Bizos asked. He was not at liberty to say, Ben-Menashe replied. Asked why

not if it had been for legitimate purposes, Ben-Menashe said "sometimes governments don't want such information to become public."

14. (U) Ben-Menashe acknowledged being paid U.S.\$262,000 by the Merchant Bank in Scotland for delivery of rice to Ghana. Asked whether that rice had ever been delivered, Ben-Menashe claimed that it was immediately returned when the deal "went sour." Asked how long he had kept that money before returning it, Ben-Menashe claimed not to remember. Bizos inquired whether the bank in Scotland had instituted legal proceedings against CSC to reclaim its money. Yes, Ben-Menashe replied, but that had been "a mistake."
MDC-Dickens & Madson contract

15. (U) Bizos also focused on the contract signed between Ben-Menashe, on behalf of Dickens and Madson, and the MDC, in which Dickens and Madson undertook to strengthen the MDC's international linkages and improve the party's international image. Ben-Menashe insisted that Rupert Johnson -- who introduced him to the defendants -- was not a director of Dickens and Madson, as indicated on the contract, and said the contract had been drawn up by Johnson and presented to him. Why then, Bizos asked, had Ben-Menashe signed a contract in which Johnson was listed as a company director? Ben-Menashe replied that he hadn't read the contract carefully. Did Ben-Menashe normally sign contracts involving large sums of money without reading them? "Sometimes" was the reply. If Johnson were not an employee of Dickens and Madson, Bizos continued, why would he draw up a contract promising to put U.S.\$20,000 in Dickens and Madson's bank account as an advance payment? "Why don't you go ask him?" Ben-Menashe retorted. Bizos asked whether Ben-Menashe had claimed to Rupert Johnson that he was "loyal" to the GOZ and said that Mugabe was his friend. ABM acknowledged saying only that he knew Mugabe, that he sympathized with the GOZ's land reform program, and that he knew a number of senior GOZ officials from his previous work in Zimbabwe. If Ben-Menashe was so open about his close relationship to the GOZ, Bizos asked, why would the MDC have trusted him to carry out an assassination plan against Mugabe? Ben-Menashe, not surprisingly, had no convincing reply.

Garwe's conduct

16. (C) Ben-Menashe continues to put on quite a show in the witness box, screaming at Bizos when asked questions he doesn't want to answer, interrupting Garwe, and using inappropriate language, including calling Tsvangirai a "scumbag." Garwe appears to be treating him with kid gloves, reminding him often -- but meekly -- that he is in a courtroom and needs to act appropriately. Garwe seems uncomfortable and unsure of how to proceed on some points -- for instance, it was unclear to most observers why he had to adjourn for 45 minutes on the first day to determine whether diplomats, journalists, members of the general public, and MDC officials should be permitted inside. Bizos asked the judge to order Ben-Menashe to answer the question regarding what services he had provided to the GOZ for the U.S.\$400,000 payment. Garwe said he could order Ben-Menashe to do so but threw up his hands and asked what he could he do if the witness refused to comply, an appalling answer for a judge who is supposed to have absolute authority in the courtroom. On the positive side, Ben-Menashe was not permitted to depart as he had hoped the evening of February 7 and it seems as though the defense will not be preempted from conducting a comprehensive cross-examination.

Access

17. (U) It appears as though most interested parties are being admitted to the courtroom to witness the trial. Diplomats and independent journalists are present for every session, and members of the general public are now being granted access. A number of seats continue to be filled by members of the security services.

Comment

18. (C) Ben-Menashe has been the state's worst enemy, and no informed observers -- particularly those privileged enough to witness his behavior in court -- believe that Tsvangirai and his co-defendants approached him to arrange Mugabe's assassination. Now that the state's case seems to be falling apart, it will be interesting to see whether other prominent names on the state's witness list -- including Air Force Commander Perence Shiri -- will be willing to sully their names by appearing on the stand in support of these obviously manufactured charges. Given that the defense has not yet completed its cross-examination of the state's first witness, this trial could continue for many more weeks.

